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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th September, 2007

No. 10856-1i/1-(BH)-22/1999/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 11th June, 2007 in I.D. Case No. 60 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Kusalda Large sized Multipurpose Co-operative Society Ltd., Kusalda, Dist: Mayurbhanj and its workman Shri Purustam Mishra, was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT : BHUBANESWAR.

INDUSTRIAL DISPUTE CASE No. 60 OF 1999

Dated the 11th June, 2007

Present:

Shri S.K. Mohapatra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Management of M/s. Kusalda
Large Sized Multipurpose
Co-operative Society Ltd.
Kusalda.

... First-Party — Management

And

Its Workman

Shri Purustam Mishra.

... Second-Party — Workman.

Appearances :

NONE.

... For First-Party — Management.

Shri P. Mishra.

... For Second-Party— Workman himself.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Kusalda Large Sized Multipurpose Co-operative Society Ltd., Kusalda and its workman Shri Purustam Mishra under Notification No. 5323/LE., dated the 18th May, 1998 vide Memo No. 8745(5)/LE., dated the 2nd July, 1999 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“ Whether the action of the Management of Kusalda Large Sized Multipurpose Co-operative society Ltd., in retrenching Shri Purustam Mishra, Salesman with effect from 17th August, 1998 is legal and or justified ? If not, what relief he is entitled to ?”

3. Shorn of all unnecessary details, the case of the workman is as follows :

The workman namely Shri Purustam Mishra had been working as Salesman in Kusalda Large Sized Multipurpose Co-operative Society Ltd., Kusalda (hereinafter referred to as the Management) with effect from 5th November, 1984. The Management retrenched the workman from his service with effect from 17th August, 1998 illegally and without adhering to the mandatory provisions of law laid down under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act). When the workman was retrenched from his service the Management paid a sum of Rs. 4,649/- to the workman instead of paying Rs. 10, 177/- as his gratuity. No disciplinary proceeding had been initiated against the workman before his retrenchment. On these averments the workman has claimed for reinstatement in service with full back wages.

4. The Management has been set *ex parte* vide order dated 8th March, 2006.

5. The workman has examined himself as W.W.1 and besides that two of his known persons as W.Ws.2 and 3. In his evidence the workman W.W.1 has deposed that he joined as Salesman on 6th November, 1984 under the Management and that he was placed under suspension on 17th August, 1998. According to W.W.1 on the very same day the Managing Director of the Management told him that they had no money to give him any further employment and therefore the service of the workman was terminated with effect from 17th August, 1998 by way of refusal of employment. According to W.W.1 no charges had been framed against him and there was no domestic enquiry. Further evidence of W.W.1 is that when he was retrenched from service no notice pay had been given to him and he had not been given any compensation. In his evidence W.W.1 has further stated that he had been working under the Management continuously since 1984 till the date of his retrenchment from service. In his evidence W.W.1 has also told that the Management did not follow the procedure under the I.D. Act when he was retrenched from his service. W.W.1 has proved Ext.1 the Xerox copy of acquittance roll under which he was paid gratuity amount of Rs. 4,649/- for having rendered service from November, 1984 till August, 1998.

6. The unchallenged evidence of W.W.1 read with the documentary evidence Ext.1 shows that the workman was not only in continuous service within the meaning of Section 25-B(1) of the I.D. Act but also it proves that at the time of retrenchment, the workman had been paid only the gratuity amount for each completed year of service at the rate of 15 days of pay for each year. The workman W.W.1 has stated that no notice pay or compensation had been paid to him. Thus it is clear that the Management had not followed the mandatory provisions of Section 25-F of the I.D. Act when the Management retrenched the workman from his service. Therefore the action of the Management in retrenching the workman with effect from 17th August, 1998 is illegal. Since the workman has been illegally retrenched from service without compliance of provision under Section 25-F of the I.D. Act, he is entitled to the relief of reinstatement in service. So far as back wages is concerned, in his deposition the workman was stated that at present he is working as a Priest and therefore it can not be said that the workman is completely un-employed. For his living the workman is apparently working as a Priest which however in itself does not amount to any gainful employment as such. In the circumstances it would be just and proper to order payment of 25% of the back wages to the workman from the date of his retrenchment till the date of his reinstatement in service.

7. Hence the reference is answered as follows :

(1) The action of the Management of Kusalda Large Sized Multipurpose Co-operative Society in retrenching the workman Shri Purustam Mishra, Salesman with effect from 17th August, 1998 is illegal and therefore, not justified.

(2) The workman is entitled to the relief of reinstatement in service with 25% of the back wages from the date of his retrenchment till the date of his reinstatement in service.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. Mohapatra
11-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S. K. Mohapatra
11-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government